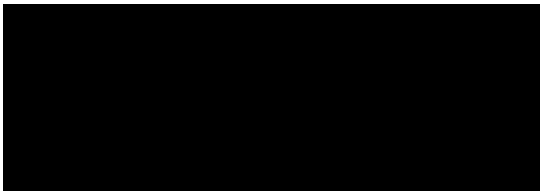




U.S. Citizenship
and Immigration
Services

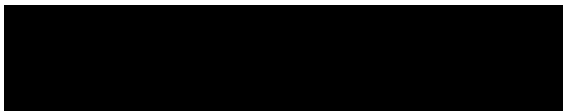
D-7



File: SRC 02 011 55590 Office: TEXAS SERVICE CENTER Date:

JUL 20 2004

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

to Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The service center director denied the nonimmigrant visa petition. The beneficiary filed a subsequent appeal. The Administrative Appeals Office (AAO) summarily dismissed the appeal because counsel did not identify specifically any erroneous conclusion of law or statement of fact for the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v). The matter is now before the AAO on a motion to reconsider. The previous decision of the AAO will be withdrawn and the motion will be rejected.

The petitioner is a hospital that seeks to employ the beneficiary as a nursing assistant. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on March 27, 2002. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Although counsel dated the appeal April 12, 2002, it was received by CIS on May 6, 2002, or 40 days after the decision was issued. Accordingly, the appeal was untimely filed. After reviewing the record, the AAO issued a decision to summarily dismiss the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v). Nevertheless, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. See 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

In addition, both the Form I-129 and the appeal Form I-290B were filed by counsel for the beneficiary. The initial Form G-28, Entry of Appearance as Attorney or Representative, that was submitted with the initial Form I-129 petition and the Form G-28 submitted on motion are both signed by the beneficiary rather than the petitioner. Citizenship and Immigration Services (CIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing a petition; the beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). As the beneficiary is not a recognized party, counsel was not authorized to file the initial petition or the appeal Form I-290B. 8 C.F.R. § 103.3(a)(1)(iii)(B).

Accordingly, the previous decision of the AAO to dismiss the appeal is withdrawn and the appeal is rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1) and 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

The beneficiary has also filed a motion seeking to have the AAO reconsider the decision to summarily dismiss the appeal. However, as that decision has been withdrawn and the initial appeal is now rejected by the AAO, there is no decision on the part of the AAO that may be reconsidered in this proceeding. According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The AAO did not enter a decision on this matter. Because the disputed decision was rendered by the director, the AAO has no jurisdiction over this motion and the motion is rejected.

ORDER: The appeal is rejected and the motion to reconsider is rejected.